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OGC 7-1826

[OCT 31 1957]

OGC Has Reviewed

MEMORANDUM FOR: Director of Central Intelligence

SUBJECT: Official Secrets Act

1. This memorandum is for information only.

2. Attached is the Attorney General's report to the National Security Council on internal security legislation. It was submitted in December 1953 and it is in some respects out of date. It treats the entire field of internal security, but insofar as it deals with unauthorized release of classified information it recommends against an American counterpart of the British Official Secrets Act (page 16). This is based on a conclusion that our espionage acts have equal coverage except for certain provisions in the British act, which would in all probability be unconstitutional in this country.

3. The Attorney General's report does not consider section 798 of Title 18 of the United States Code, which pertains to communications intelligence. It is conceivable that this section would apply to information released about United States radar activities, but as it is limited to procedures and methods used in the intercept of communications pure ELINT operations might be outside the section. If applicable, prosecution under this section is somewhat easier than under the straight espionage sections 793 and 794, as it provides punishment for anyone knowingly and willfully publishing or using in any manner prejudicial to the safety or interest of the United States or for the benefit of any foreign government to the detriment of the United States any classified information concerning the communications intelligence activities of the United States.

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3. The Attorney General's report also, of course, does not consider the impact of the Supreme Court ruling in the Jencks case on prosecution under the espionage acts. Positive recommendations for legislation to strengthen the internal security laws, set forth in Table I of the report, do not affect the problem of release of classified information to any great extent. Certain of these have been acted on--thus, the death penalty for espionage in time of peace added in the amendments to section 794 in 1954. The atomic energy provisions on classified information were also amended and strengthened in 1954. In these amendments the Atomic Energy Commission included an interesting injunction section which has not yet been tested in any court. This reads:

"Whenever any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any section of this chapter or any regulations or order issued thereunder, the Attorney General on behalf of the United States may make application to the appropriate court for an order enjoining such acts or practices, and upon a showing that such person has engaged or is about to engage in any such acts or practices, a permanent or temporary injunction, restraining order, or other remedy may be granted."

4. This Office has been considering similar legislation for information pertaining to intelligence sources and methods, and we are in the process of suggesting to the Department of Justice several possible amendments to strengthen the protection of classified information. In addition to the injunction clause, we are drafting a proposal which would be similar to the communications intelligence statute but would apply to intelligence activities generally. To our knowledge the Department of Justice has never considered these suggestions in its own studies. If and when Justice agrees that such suggestions may be helpful, we should then, I believe, compile all the examples of information published in newspapers and other journals which we believe to have been damaging to demonstrate the need for additional legislation.

Att

cc: ~~DDCI~~

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Legislative Counsel

LAWRENCE R. HOUSTON
General Counsel